

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

DAVID SHAWN HICKS,

Defendant.

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Case No. 1:06CR00009

OPINION AND ORDER

By: James P. Jones

Chief United States District Judge

William H. Cleaveland, Roanoke, Virginia, for Defendant.

The defendant has been charged in a Superseding Indictment with committing perjury in a civil deposition and before a federal grand jury. The defendant has moved to dismiss these perjury counts on the ground that the government will be unable to prove that his testimony was material.

“Unless there is a stipulated record, or unless immunity issues are implicated, a pretrial motion to dismiss an indictment is not a permissible vehicle for addressing the sufficiency of the government’s evidence.” *United States v. DeLaurentis*, 230 F.3d 659, 660 (3d Cir. 2000); *see also United States v. Hutcherson*, Case No. 6:05CR00039, 2006 WL 270019, at *1 (W.D. Va. Feb. 3, 2006) (denying pretrial

motion to dismiss contending that government would be unable to prove one element of offense) (Turk, J.).

No exceptions exist in this case that would allow me to determine the sufficiency of the government's evidence prior to trial. Accordingly, it is **ORDERED** that the Motion to Dismiss Counts Three-Seven of the Superseding Indictment is DENIED.¹

ENTER: April 20, 2006

/s/ JAMES P. JONES
Chief United States District Judge

¹ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.